IN THE MAGISTRATE COURT OF MONONGALIA COUNTY, WEST VIRGINIA

THE MONONGALIA COUNTY COAL COMPANY,

Plaintiff,

ROCCO S. POLCE,

v.

Defendant.

COMPLAINT

CIVIL ACTION NO.: MAGISTRATE: ________

NOW COMES the Plaintiff, The Monongalia County Coal Company ("MONCC"), by and through undersigned counsel, and for its Complaint, avers and states as follows:

PARTIES

- 1. Plaintiff MONCC is incorporated in Delaware and is licensed to do business in the State of West Virginia.
- 2. Upon information and belief, Defendant Rocco S. Polce ("Polce") is a resident of Preston County, West Virginia.
- 3. Upon information and belief, at all times pertinent hereto, Defendant Polce was either an employee or former employee of MONCC in Monongalia County, West Virginia.

JURISDICTION

- 4. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 3 of the Complaint as if fully set forth herein.
- 5. The Court has jurisdiction over this action pursuant to West Virginia Code Section 50-2-1.

VENUE

- 6. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 5 of the Complaint as if fully set forth herein.
 - 7. Venue is appropriate under West Virginia Code Sections 50-2-2 and 56-1-1.

FACTS

- 8. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 7 of the Complaint as if fully set forth herein.
 - 9. Defendant was employed by Plaintiff in October 2016.
- 10. As part of Defendant's compensation as an employee of Plaintiff, Plaintiff issued Defendant check number 12170 in the amount of \$1,853.07 dated October 14, 2016. See "Check No. 12170," attached hereto as "Exhibit A."
- 11. On or about December 16, 2016, Defendant's employment was terminated by Plaintiff.
- 12. On or about December 21, 2016, Defendant communicated to Plaintiff that Defendant had not received check number 12170.
- 13. On or about December 22, 2016, in reliance upon Defendant's communication, Plaintiff requested that Plaintiff's bank issue a stop payment procedure on check number 12170.
- 14. Plaintiff paid \$10.00 in bank fees for the stop payment procedure. See "January 12, 2017, Letter From Fifth Third Bank," attached hereto as "Exhibit B."
- 15. On or about December 23, 2016, in reliance upon Defendant's communication, Plaintiff issued a new check, check number 12571 in the amount of \$1,853.07 dated October 14, 2016. See "Check No. 12571," attached hereto as "Exhibit C."

- 16. Upon further investigation, Plaintiff learned that Defendant cashed check number 12170 on or about October 13, 2016.
- 17. Upon further investigation, Plaintiff learned that Defendant cashed check number 12571 on or about December 28, 2016.
- 18. On or about January 18, 2017, Plaintiff sent a letter via certified mail to Defendant at Defendant's last known address, requesting reimbursement of \$1,853.07 for the amount of one of the two checks, plus \$10.00 for bank fees. *See* "January 18, 2017, Letter to Rocco S. Polce Re: Bonus Check," attached hereto as "Exhibit D."
- 19. The request letter provided Defendant ten days from his receipt of the letter in which to reimburse Plaintiff.
- 20. Defendant did not reimburse any amounts, nor respond to Plaintiff in any manner, within such ten-day period.
- 21. On or about March 8, 2017, having received no response from Defendant,
 Plaintiff sent a second letter via certified mail to Defendant at Defendant's last known address,
 demanding reimbursement of \$1,853.07 for the amount of one of the two checks, plus \$10.00 for
 bank fees. *See* "March 8, 2017, Letter to Rocco S. Polce Re: Bonus Check," attached hereto as
 "Exhibit E."
- 22. The demand letter provided Defendant ten days from his receipt of the letter in which to reimburse Plaintiff.
- 23. A delivery receipt for the demand letter was signed for by the agent at Defendant's last known address. See "Demand Letter Receipt," attached hereto as "Exhibit F."
 - 24. Upon information and belief, the agent is Judy Shackelford.

- 25. By virtue of such delivery receipt, Defendant received the demand letter.
- 26. Defendant did not reimburse any amounts, nor respond to Plaintiff in any manner, within such ten-day period, or at any time afterward.

COUNT I -FRAUD AND INTENTIONAL MISREPRESENTATION

- 27. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 26 of the Complaint as if fully set forth herein.
- 28. Defendant committed various acts against the Plaintiff including, *inter alia*, misrepresenting to Plaintiff that he did not receive check number 12170 when in fact he had received it, and further requesting that Plaintiff issue a new check after cashing check number 12170.
- 29. Defendant committed these acts with knowledge that the representations were material and false.
- 30. Defendant committed these acts with an intent, knowledge, and purpose to induce Plaintiff to act in reliance upon the misrepresentation.
- 31. The acts of Defendant did in fact induce Plaintiff to act, in justifiable reliance under the circumstances, on Defendant's misrepresentation.
 - 32. Defendant's intentional acts proximately caused Plaintiff damages.
- 33. As a direct and proximate result of Defendant's intentional acts, Plaintiff suffered damages including but not limited to the following:
- (a) actual damages including but not limited to \$1,853.07 from the second check and \$10.00 in bank fees;
 - (b) annoyance and inconvenience; and

(c) any and all other damages, costs or other charges which the Court deems appropriate.

COUNT II -TRESPASS TO CHATTELS

- 34. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 33 of the Complaint as if fully set forth herein.
- 35. Defendant committed various acts against the Plaintiff including, *inter alia*, interfering with Plaintiff's right of possession to its money by misrepresenting to Plaintiff that Defendant did not receive check number 12170 when in fact he had received it, requesting a new check, then cashing check 12571 and using the funds therefrom for his own use.
- 36. Defendant committed these acts with an intent, knowledge, and purpose to deprive Plaintiff of the possession and use of its property.
- 37. The acts of Defendant did in fact substantially interfere with Plaintiff's possession of its chattels, including its money, by depriving Plaintiff of its lawful right of possession to check 12571.
 - 38. Defendant's intentional acts proximately caused Plaintiff damages.
- 39. As a direct and proximate result of Defendant's intentional acts, Plaintiff suffered damages including but not limited to the following:
- (a) actual damages including but not limited to \$1,853.07 from the second check and \$10.00 in bank fees;
 - (b) annoyance and inconvenience; and
- (c) any and all other damages, costs or other charges which the Court deems appropriate.

COUNT III -CONVERSION AND CIVIL THEFT

- 40. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 39 of the Complaint as if fully set forth herein.
- 41. Defendant committed various acts against the Plaintiff including, *inter alia*, interfering with Plaintiff's right of possession to check 12571 by misrepresenting to Plaintiff that he did not receive check number 12170 when in fact he had received it, requesting a new check, cashing check 12571 and using the funds therefrom for his own use, and refusing to reimburse Plaintiff upon multiple demands of Plaintiff.
- 42. Defendant committed these acts with an intent, knowledge, and purpose to deprive Plaintiff of the possession and use of its property.
 - 43. Plaintiff possessed a right to immediate possession of its property.
- 44. The acts of Defendant did in fact wrongfully exert dominion over Plaintiff's property.
- 45. The acts of Defendant did in fact substantially interfere with Plaintiff's possession of its chattels including its money.
 - 46. Defendant's intentional acts proximately caused Plaintiff damages.
- 47. As a direct and proximate result of Defendant's intentional acts, Plaintiff suffered damages including but not limited to the following:
- (a) actual damages including but not limited to \$1,853.07 from the second check,\$10.00 in bank fees, annoyance and inconvenience; and
- (b) any and all other damages, costs or other charges which the Court deems appropriate.

WHEREFORE, the Plaintiff, The Monongalia County Coal Company, respectfully demands a judgment for relief that will fully and fairly compensate it for the damages it sustained as a direct and proximate result of the Defendant's unlawful acts, including prejudgment and post-judgment interest pursuant to West Virginia Code Section 56-6-31.

Respectfully Submitted,

THE MONONGALIA COUNTY COAL COMPANY

By Counsel

Charles F. Johns, W. Va. Bar #5629 Ryan M. Watson, W. Va. Bar #12932

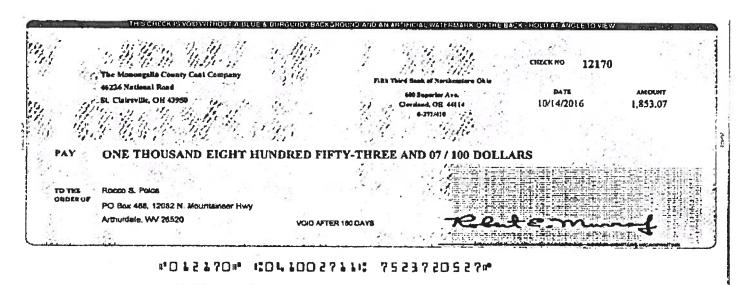
400 White Oaks Boulevard Bridgeport, WV 26330 (304) 933-8000

Attorneys for The Monongalia County Coal Company

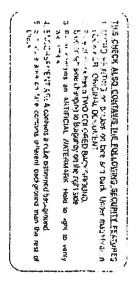
STEPTOE & JOHNSON PLLC

Of Counsel

Sequence Number: 72105022 Paid Date: 10/13/2016



Sequence Number: 72105022 Paid Date: 10/13/2016



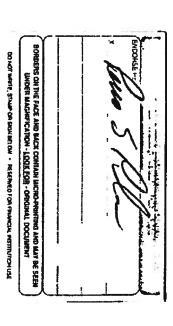


EXHIBIT A



January 12, 2017

Murray Energy Corporation 46226 National Road St. Clairsville, OH 43950

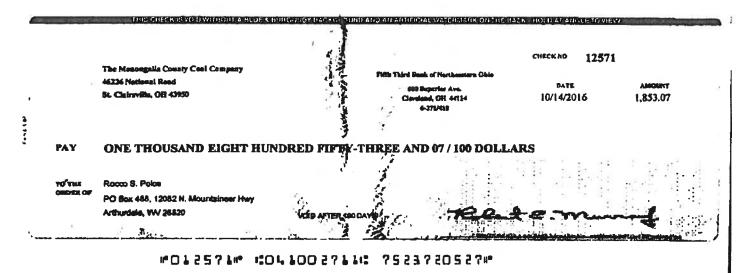
Dear Kim-

Please be advised that the fee for placing a stop payment on 12/22/16 via Fifth Third Direct on check #12170 for \$1,853.07 dated 10/14/16 was \$10.

Thank you,

Mike Lee

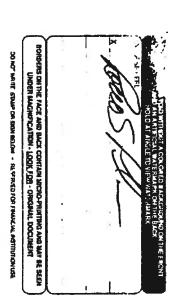
Senior Vice President Treasury Management Sequence Number: 78093194 Paid Date: 12/28/2016



Sequence Number: 78093194 Paid Date: 12/28/2016

20161228009402501679

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THE MONONGALIA COUNTY COAL COMPANY

46226 National Road St. Clairsville, Ohio 43950

PHONE: (740) 338-3100 FAX: (740) 338-3405

January 18, 2017

Via Certified and U.S. Mail

Rocco S. Polce P.O. Box 488, 12082 N. Mountaineer Hwy. Arthurdale, West Virginia 26520

Re: Bonus Check

Dear Mr. Polce:

On or about December 21, 2016, The Monongalia County Coal Company ("MONCC") was made aware of your statement that you did not receive bonus check number 12170, dated October 14, 2016, in the amount of \$1,853.07. Based upon this statement, we made efforts with our bank to issue you another check. This second check was numbered 12571 and was also in the amount of \$1,853.07. Our efforts here cost MONCC an additional \$10.00 in bank fees, as per the attached bank charge letter.

Upon further investigation it was determined that you indeed cashed both checks. Attached to this letter are copies of both checks, each bearing your signature. Accordingly, MONCC hereby requests that you fully reimburse us for i) the second check amount of \$1,853.07, plus ii) the \$10.00 bank fee, totaling \$1,863.07. Please mail a check in the amount of \$1,863.07 to the address on this letterhead within ten (10) days of receiving this letter. Failure to do so may require MONCC to pursue all remedies available, including civil and criminal legal action.

Regards.

Paul B. Piccolini

Vice President, Human Resources

& Employee Relations

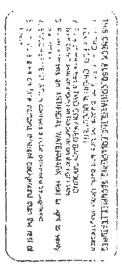
Murray Energy Corporation

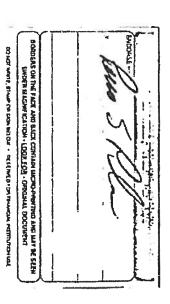
Enclosures:

Image of cashed check number 12170 Image of cashed check number 12571 Bank charge letter Sequence Number: 72105022 Paid Date: 10/13/2016

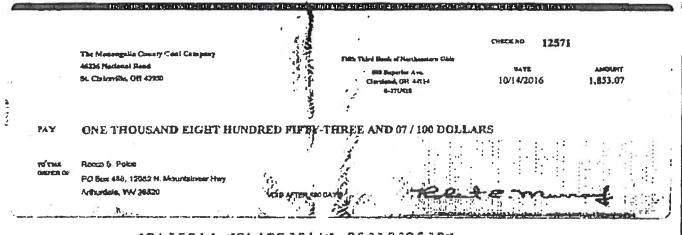
The Manuscalla Charry Onel Company	Синде но 12170	
46226 Noticeal Read St. Clairwille, GM 43756	#88 Superfor Ann. Dereland, OE 4114 : 10/14/2016 8,853,07	
PAY ONE THOUSAND EIGHT HUNDRI	ED FIFTY-THREE AND 07/100 DOLLARS	
OLDERS OF PO Bas 458, 12082 N. Mountaineer Hwy Arthurdale, WV 26520	VOICEMENT HODAYS	

Sequence Number: 72105022 Paid Date: 10/13/2016





Sequence Number: 78093194 Paid Date: 12/28/2016

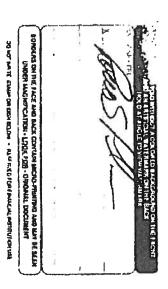


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January 12, 2017

Murray Energy Corporation 46226 National Road St. Clairsville, OH 43950

Dear Kim-

Please be advised that the fee for placing a stop payment on 12/22/16 via Fifth Third Direct on check #12170 for \$1,853.07 dated 10/14/16 was \$10.

Thank you,

Mike Lee

Senior Vice President Treasury Management No. 1:18-ap-00028 Doc 1-1 Filed 06/11/18 Entered 06/11/18 16:37:36 Page 15 of

THE MONONGALIA COUNTY COAL COMPANY

46226 National Road St Clairsville, Ohio 43950

PHONE: (740) 338-3100 FAX: (740) 338-3405

March 8, 2017

Via Certified and U.S. Mail

Rocco S. Polce P.O. Box 488, 12082 N. Mountaineer Hwy. Arthurdale, West Virginia 26520

Re: Bonus Check

Dear Mr. Polce:

As of the date of this letter, you have not responded to our request for reimbursement, which was mailed to you over six (6) weeks ago. We now demand that you mail a check in the amount of \$1,863.07 to the address on this letterhead, made to the attention of Kim Denning, within ten (10) days of receiving this letter. If you fail to do so we will pursue all remedies available, including civil and criminal legal action.

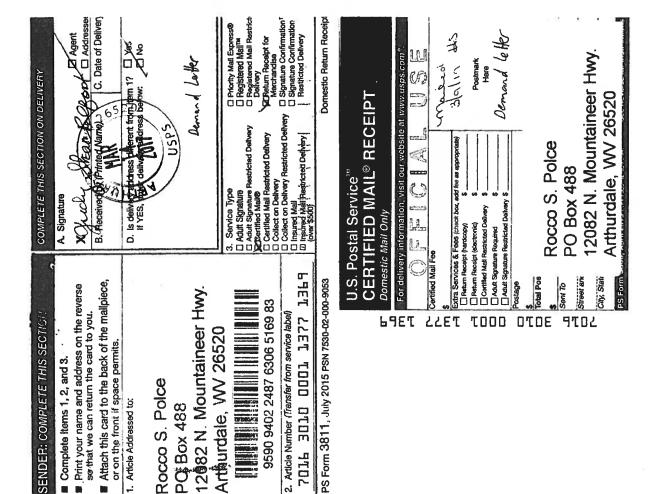
Regards,

Cory R. Barack

Attorney

Murray Energy Corporation

Conf Barack



Rocco S. Polce

PQ Box 488

1. Article Addressed to: